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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4569 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

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2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

RAJARSHI KAMDAR SANGH

Versus

STATE OF GUJARAT

Appearance:

MR RV DESAI for Petitioner

Mr. V.B.Gerania AGP for Respondent No. 1

M/S TRIVEDI & GUPTA for Respondent No. 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 23/07/98

ORAL JUDGEMENT

Rule. Learned Assistant Government Pleader waives

service of notice of Rule on behalf of respondents nos 1 and 2. Mr. Thaker learned advocate waives service of notice of Rule on behalf of respondent no.3.

2 Rajarshi Kamdar Sangh a registered union registered under the provisions of Trade Unions Act 1926 and claiming to be representing almost all the workers of respondent no.3 has filed the present petition to challenge the order of the competent authority to passed on 17.3.97 by which their request to make a reference has been rejected.

3. It is the claim of the petitioner that the respondent no.3 had illegally enforced the lock out for the period between 4.7.95 and 24.11.1995 and has denied wages to the workman by the respondent no.3 and therefore, the petitioner had approached the respondents nos 1 and 2 by making a representation and requesting to make a reference to the competent authority to raise an industrial dispute between them and respondent no.3. The competent authority by his order dated 17.3.1997 refused to make a reference by holding that the petitioner and its members were responsible for the said denial of wages and they were not entitled to claim wages on the principle of no work no pay. The petitioner has therefore, come before this court by contending that the competent authority has gone beyond its jurisdiction and authority in deciding the question as to whether the reference to be made or not. It is submitted on behalf of the petitioner that it is not open for the competent authority to go into the merits of the industrial dispute and record a finding of the industrial dispute and therefore, the competent authority refused to make a reference.

4. On behalf of the employer respondent no.3 it is contended that the petitioner has not mentioned specifically as to how many members are there with the petitioner union. It is further submitted that the petitioner union might be having very few members and therefore, the petitioner cannot raise an industrial dispute in question. It is further submitted on behalf of respondent no.3 that the workmen admittedly have not worked and therefore, on the principle of no work no pay, there could not be any question to be decided as to whether they are entitled to get wages or not. He further submitted that there is no illegality in the order passed by the competent authority and this court should not interfere with the order passed by the competent authority by exercising powers under article 226 of the Constitution of India.

5. It is true that in the petition the petitioner union has not specifically stated as to how what is the total strength of the workmen and how many workmen of this industry are its members. But the pleading of the respondent no.3 is also equally vague. In the affidavit in reply the respondent no.3 has not made a specific contention that the petitioner no.1 union is having a minority membership and that too a minority. The petitioner has produced along with the petition a copy of the representation made before the conciliation officer and that copy of the representation made by the petitioner clearly shows that the petitioner has claimed that there are more than 600 workmen working with the respondent no.3 and all the workmen working with the respondent no.3 are members of the petitioner union. It must be also further mentioned that the petitioner had issued a demand notice dated 16.2.96 to the respondent no.3. But even after receiving said demand notice respondent no.3 had not raised the question of authority/standing of the present petitioner to raise the demand. Therefore, in the circumstances said contention raised on behalf of the respondent no.3 could not be accepted and the petitioner could not be denied the locus to file the present petition.

6. If the reasons given by the competent authority to refuse the reference are seen then it would be quite clear that the competent authority has gone into the merits of reference. It is settled law that when the workmen are making a demand for making a reference, it is not open for the competent authority to go into the question of merits of the demand. If the competent authority enters into the merits of demand and records its finding on the merits of demand and refuses to make a reference, then the competent authority commits an illegality. Therefore, in the circumstances, the order passed by the competent authority i.e. respondent no.2 is illegal and deserves to be quashed and set aside.

7. Learned advocate for the respondent no.3 tried to support the order of respondent no.2 by submitting before me that the respondent no.2 has not committed any illegality when he says that there is no question of making payment on the principle of no work no pay when the workmen have not worked. But contention of the learned advocate for the petitioner is that the competent authority is purposely avoiding to make a reference.It is the claim of the workmen that the lock out has been forced and because of the lock out they could not get the work. Therefore, it could not be said that the members

of the petitioner no.1 themselves had not reported on the work and as they did not work they are not entitled to get pay . The dispute between the parties is as to whether there was a valid lock out or not and whether the respondent no.3 was justified in enforcing the lock out and on that finding, the demand raised by the workmen could be decided. Therefore, it is necessary to make a reference as regards the dispute in question to the appropriate authority. In the circumstances the petition deserves to be allowed and the matter will have to be remanded to the respondent no.2. Thus the petition is allowed. The matter is remanded to the respondent no.2. The petitioner and the respondent no.3 to appear before the respondent no.2 on 31.7.1998. The respondent no.2 is directed it decide the said question after hearing the concerned parties on or before 14.8.1998. Rule is made absolute accordingly. No order as to costs.

(S.D.Pandit.J)